D.B. SPECIAL APPEAL (CIVIL) NO. 92/2007

Date of order : 14.09.2007

HON'BLE MR. RAJESH BALIA, J.
HON'BLE MR. SANGEET LODHA, J.

Mr. S.L. Jain, for the appellant.

Heard Learned counsel for the appellant. Since the Misc. Appeal No. 3742/2003 DRJ had been dismissed as a result of preamptry order even before it was registered and before issue of any notice to the respondent, it was not considered a properly constituted appeal and has been dismissed at that stage. In view of that, notice of this appeal is not required to be given to the respondent and need not be called upon to appear at this stage as unless the notice of appeal or any application thereunder have not been issued and this is yet to be registered.

The appellant had filed the appeal against the award made by learned District Judge, Pratapgarh, District:Chittorgarh in the reference made under the Land Acquisition Act, 1894 on a Rs. 10/- Stamp. The office has pointed out amongst others that the appellant is required to disclose the valuation of appeal and pay appropriate ad valorum court fees thereon. However, neither any reply to

it was filed nor appropriate court fee was filed.

It is in the aforesaid circumstances, when the matter came before the learned Single Judge on 17.10.2005 peremptory it was ordered that four weeks time is granted to remove the defects. However, if defects are not removed within four weeks the appeal will stand dismissed without reference to the court. Defects having not been removed, the order of dismissal of appeal was recorded on 07.12.2005.

In the aforesaid circumstances, the appellant preferred a restoration application which itself was barred by time alleging that due to his sickness he could not file the restoration application within limitation and in support of his sickness he submitted a prescription given to him by the Senior Medical Officer, Community Health Centre, Mandfia, District: Chittorgarh. The prescription from 03.10.2005 to 05.05.2006 revealed that it was the case of hyper tension and the suspected heart involvement as the prescription reveals that patient had been advised to undergo X-ray, ECG, lipid profile and also for testing Serum creatine. It is in the aforesaid circumstances, the appellant tried to explain the delay in filing the restoration application along with application under Section 5 of the

Limitation Act.

The learned Single Judge vide judgment and appeal has rejected the application under Section 5 of the Limitation Act not finding it to be sufficient cause and consequently, dismissed the restoration application also.

In the facts and circumstances of the case noticed above, we are of the opinion that the restoration application ought to have been allowed as the appellant was suffering from serious disease which is even apparent from the prescription, subject to payment of ad valorum court fee on the valuation to be disclosed by the appellant. In these circumstances, the appeal is allowed. Order under appeal is set aside. The application for restoration of the Civil Misc. Appeal No. 3742/2003 DRJ is allowed subject to the appellant paying the ad valorum court fee on the amount of valuation of the appeal to be disclosed by this appellant within one month.

If court fee is not disclosed, and/or the amount of court fee thereon is not paid within aforesaid period, this order shall not be given effect to.

(SANGEET LODHA)J. **(RAJESH BALIA)J.**